

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-02-OR-355
	)	
Pearson Broadcasting of Mena, Inc.	)	NAL/Acct. No.200332620007
Licensee of KTTG(FM)	)	
Mena, Arkansas	)	FRN 0003-7795-68
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: February 18, 2003**

By the Enforcement Bureau, New Orleans Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Pearson Broadcasting of Mena, Inc. (“Pearson”), licensee of FM broadcast station KTTG, Mena, Arkansas, apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000) for willful and repeated violation of Section 11.61 of the Commission's Rules (“Rules”).<sup>1</sup> Specifically, we find Pearson apparently liable for failing to conduct required Emergency Alert System (“EAS”) tests.

**II. BACKGROUND**

2. On November 6, 2002, an agent from the FCC Enforcement Bureau’s New Orleans Office inspected FM broadcast station KTTG in Mena, Arkansas. During the course of the inspection, no logs could be produced reflecting any EAS events or reasons for failure to send and receive required tests of the EAS. In addition, although EAS equipment was installed, a continuous EAS equipment tape printout showed no activity from June 23, 2002 to August 11, 2002, the last date on the tape. The station’s manager stated he did not know the last time the station conducted an EAS test, and he thought the equipment was having problems. No one at the station was able to run an EAS test when requested by the agent.

**III. DISCUSSION**

3. Section 11.61 of the Rules states that EAS tests must be sent and received at regular intervals. Required Monthly Tests originate from EAS Local or State Primary sources and must be retransmitted within 60 minutes of receipt.<sup>2</sup> Required Weekly Test must be conducted at least once a week at random days and times.<sup>3</sup> However, the lack of station EAS log entries and a continuous tape printout of the EAS activity from June 23, 2002 to August 11, 2002, demonstrate that Pearson was not receiving or sending

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<sup>1</sup> 47 C.F.R. § 11.61.

<sup>2</sup> See 47 C.F.R. § 11.61(a)(1)(v). See also, *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002) (Effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt.).

<sup>3</sup> See 47 C.F.R. § 11.61(a)(2)(i)(A).

required tests from June 23, 2002 until the time of inspection on November 6, 2002. Furthermore, there were no entries in the station's log to indicate any problem or malfunction of the EAS equipment as required by Section 11.35(b) of the Rules.<sup>4</sup> Station management was unaware as to when the station had last conducted an EAS test. No station personnel were able to conduct an EAS test.

4. Based on the evidence before us, we find Pearson willfully<sup>5</sup> and repeatedly<sup>6</sup> violated Section 11.61 of the Rules by failing to conduct weekly and monthly EAS tests.

5. Section 1.80(b)(4) of the Rules<sup>7</sup> sets forth the base forfeiture amounts for various violations of the Commission's Rules. The Rules do not establish a base forfeiture amount for violating the Commission's rules requiring EAS tests. Therefore, we must determine an appropriate forfeiture amount for this violation.<sup>8</sup> The requirement that broadcast stations conduct EAS tests is similar in both nature and severity to other required operational performance checks identified in the Rules as required measurements or required monitoring. Section 1.80(b)(4) of the Rules sets the base forfeiture amount at \$2,000 for failure to make required measurements or conduct required monitoring. Therefore, we will assess the base forfeiture for failing to conduct EAS test in the amount of \$2000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, and any history of prior offenses, ability to pay, and other such matters as justice may require."<sup>9</sup> Considering the entire record and applying the factors listed above, this case warrants a \$2,000 forfeiture.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>10</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>11</sup> Pearson Broadcasting of Mena, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for willful and repeated violation of Section 11.61 of the Rules by failing to conduct required weekly and monthly

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<sup>4</sup> 47 C.F.R. § 11.35(b).

<sup>5</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>6</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>7</sup> 47 C.F.R. § 1.80(b)(4).

<sup>8</sup> See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that "...any omission of a specific rule violation from the...[forfeiture guidelines]...should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

<sup>9</sup> 47 U.S.C. § 503(b)(2)(D)

<sup>10</sup> 47 U.S.C. § 503(b).

<sup>11</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

EAS tests.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Pearson Broadcasting of Mena, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>12</sup>

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street S.W., Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Pearson Broadcasting of Mena, Inc., 2937 Highway 71 North, Mena, Arkansas 71593.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins

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<sup>12</sup> See 47 C.F.R. § 1.1914.

District Director, New Orleans Office  
Enforcement Bureau

Attachment